

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 08-67388

ALECIA DENISE WILCOX,

Chapter 7

Debtor.

Judge Thomas J. Tucker

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ORDER DISMISSING CASE

On November 7, 2008, Debtor filed a voluntary petition for relief under Chapter 7, initiating this case, and also filed "Exhibit D" (Individual Debtor's Statement of Compliance With Credit Counseling Requirement)(Docket # 2). Debtor checked Box 3 on Exhibit D, which provides:

I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the five days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy petition. *[Must be accompanied by a motion for determination by the court.]*
[Summarize exigent circumstance here.]

However, Debtor failed to state in her certification any exigent circumstances explaining why Debtor could not obtain credit counseling before filing her bankruptcy petition, and Debtor did not file a motion for approval of the certification, as required by E.D. Mich. LBR 1007-6(a).

On December 9, 2009, the Clerk of the Court issued a Notice of Deficient Filing regarding the missing motion for approval of the certificate of exigent circumstances (Docket # 12). The Notice provided, in relevant part: "A corrected/missing document is required within (8) eight days of this notice. If not corrected, the case may be dismissed or an order striking the document from the record may be entered by the Court." However, Debtor never filed the

missing motion.¹ Rather, on December 16, 2008, Debtor merely filed a “Certificate of Counseling” (Docket # 18), which states that on December 15, 2008, Debtor received “an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§ 109(h) and 111.” For the following reasons, the Court must dismiss this case. 11 U.S.C. § 109(h)(1) requires that a debtor obtain a credit counseling briefing before filing a bankruptcy petition, in order to be eligible to be a debtor under the Bankruptcy Code. That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, **during the 180-day period preceding the date of filing the petition by such individual**, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(Emphasis added). 11 U.S.C. § 109(h)(3) provides a limited exception to § 109(h)(1)’s requirement of obtaining a credit counseling briefing **before** filing the bankruptcy petition. This exception permits a debtor to obtain the required credit counseling briefing up to 30 days after filing the petition, and upon entry of an order for cause shown, up to 45 days after filing the petition. Section 109(h)(3)(A) provides:

(3) (A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that--

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

¹ This fact, and the other circumstances described in this Order, came to the attention of the undersigned judge only very recently, on June 19, 2009.

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

E.D. Mich. LBR 1007-6(a) provides the procedure that a debtor must use when filing a certificate of exigent circumstances under § 109(h)(3)(A):

(a) Certification Procedures. A debtor who files a certification under § 109(h)(3)(A) shall also file a motion for approval of the certification. The debtor shall file the certification and the motion with the petition, serve it on all parties and file a certificate of service. The deadline to file a response shall be 10 days after service. If no timely response is filed, the certification shall be deemed satisfactory under § 109(h)(3)(A)(iii) without a hearing or further order. The motion shall be accompanied by a notice that the deadline to file a response is 10 days after service and that if no response is filed, the court will deem the certification satisfactory under § 109(h)(3)(A)(iii) without a hearing.

In this case, Debtor failed to comply with the requirements of both § 109(h)(3)(A) and LBR 1007-6.

First, Debtor's certification of exigent circumstances failed to state any exigent circumstances.

Second, Debtor never filed a motion for approval of her certification of exigent circumstances (timely or otherwise), as required by LBR 1007-6(a).

Third, the only Certificate of Counseling that Debtor ever filed — *i.e.*, the one filed on December 16, 2008 (Docket # 18) — was not timely filed under 11 U.S.C. § 109(h)(3)(B),

which, even if a motion for approval of the certification of exigent circumstances has been timely filed and granted, requires a debtor to file the Certificate of Counseling within 30 days after filing the bankruptcy petition, unless a 15 day extension is timely sought and granted.

For these reasons, the Debtor was required to meet the requirement of 11 U.S.C. § 109(h)(1), that she obtain credit counseling *before* filing her bankruptcy petition, in order to be eligible to be a debtor in this case. Debtor did not meet this requirement.

For these reasons, Debtor is not eligible to be a debtor in this case under 11 U.S.C. § 109(h)(1), and this case must be dismissed.

Accordingly,

IT IS ORDERED that this bankruptcy case is DISMISSED.

Signed on June 20, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge